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11/17/93
(signed)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

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CERRO COPPER PRODUCTS CO.,

Plaintiff,

v.

MONSANTO COMPANY,

Defendant.

Civil Action No.
92-CV-204-WDS

**CONSENT PROTECTIVE ORDER REGARDING
PRODUCTION OF CONFIDENTIAL INFORMATION**

Plaintiff Cerro Copper Products Co. ("Cerro"), and Defendant Monsanto Company ("Monsanto") having stipulated that a Protective Order should be entered pursuant to Fed. R. Civ. P. 26(c) to maintain the confidentiality of certain information and materials to be exchanged between the parties, and it appearing to the Court that such a Protective Order is necessary, appropriate, and will facilitate discovery;

IT IS ORDERED that:

If in the course of the proceedings in this action a party (the "Producing Party") is required or undertakes to disclose or supply confidential business or technical or scientific information or material, the following procedure shall be employed:

1. All information or material which is believed to contain confidential matter supplied by the Producing Party to any other party shall be marked or otherwise designated as being "CONFIDENTIAL 92-CV-204-WDS." For purposes of this paragraph such marking or designation shall be as follows:

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(a) A document believed to contain any confidential information shall be so marked on every page believed to contain any confidential information.

(b) Information in the form of an oral deposition can be designated as being confidential at the commencement of the deposition, or at any time any question is asked which may elicit an answer containing confidential information.

(c) Information contained or embodied in a form other than writing, such as samples, films, tapes, apparatus, drawings, graphs, pictures and the like shall be designated as being confidential by affixing a tag or label to the item conspicuously bearing the above specified notation.

(d) Information which becomes available to any party via inspection, measuring, analyzing, or testing of any sample or thing marked as provided in paragraph (c) received from another party or prepared by utilizing confidential information supplied pursuant to this Protective Order shall also be considered to be confidential without need for additional designation by the party supplying the sample or thing or information.

(e) There shall be no confidential designation with respect to any document or thing except in the good faith belief that the document or thing contains confidential subject matter.

2. All confidential information or material supplied by any party to this action which is marked or otherwise designated confidential in accordance with paragraph 1 shall be used solely for the purposes of this litigation and shall be kept in

confidence, and shall not be disclosed by the Receiving Party without prior written consent of the Producing Party or by further Order of the Court to anyone other than this Court, except as provided herein.

3. Access to marked or designated confidential information and material in the possession of the Receiving Party may only be given by the Receiving Party to the following persons, provided that they agree to be bound by the terms of this Protective Order:

(a) In-house and outside counsel directly involved in this action and their legal or paralegal assistants and stenographic or clerical employees;

(b) Employees or former employees of Cerro and/or Monsanto whose access to the marked or designated confidential information and material is reasonably deemed in the good faith judgment of counsel for the Receiving Party to be essential for the conduct of the litigation and provided the individual signs a Confidentiality Agreement in the form attached hereto;

(c) Independent experts retained by a party or specifically employed by counsel to furnish technical or expert services in this litigation, provided that the services of such experts are reasonably deemed in the good faith judgment of counsel for the Receiving Party to be essential for the conduct of the litigation and provided the expert signs a Confidentiality Agreement in the form attached hereto; and

(d) Court personnel and court reporters and typists recording or transcribing testimony.

4. All transcripts, depositions, exhibits, answers to interrogatories and other documents filed by any party with the Court for any purpose and which comprise or contain designated confidential information, or any pleading or memorandum purporting to reproduce or paraphrase such information, shall be filed in sealed envelopes or other appropriate sealed containers on which shall be endorsed the title of this action and an indication of the nature of the contents such sealed envelope or other container, the words "DESIGNATED CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER," and a statement substantially in the following form:

This envelope contains documents which are being filed in this case under seal by (name of party) pursuant to a Protective Order and is not to be opened or the contents thereof to be displayed or revealed except by Order of the Court.

Where possible, those pages claimed to contain confidential information or material shall be segregated from the remainder of the associated material and filed separately. Any document so filed shall not be made a part of the public record herein and shall be returned to the respective parties promptly upon completion of the litigation.

5. Nothing contained herein shall preclude reference to any confidential information in the course of any deposition, so long as the deponent and all persons attending said deposition, whether counsel or otherwise, are authorized to receive such

information under this Protective Order, or by Order of the Court. Any person who was the author or a copy recipient of a document designated confidential may be shown the document for the purpose of interrogation of such person at trial, by deposition, or during the course of preparation for trial.

6. Any party wishing to use confidential information during trial shall give reasonable notice to all other parties to this Protective Order of such intent so that the confidentiality of the information can be protected by agreement or, if necessary, as determined and directed by the Court.

7. The restrictions set forth in any of the preceding paragraphs shall not apply to information and material or any portion thereof which:

(a) was, is, or becomes public knowledge, not in violation of this Protective Order;

(b) was, or is, acquired without obligation of secrecy from a party not a party to this Civil Action having the right to disclose or otherwise supply same;

(c) was previously known to the receiving party; or

(d) is independently developed by the receiving party.

8. Control and distribution of all confidential information and material covered by this Protective Order shall be the responsibility of the counsel of record.

9. An inspection of documents of the Producing Party by another party, prior to the other party receiving copies thereof, shall be deemed to be subject to the terms of this Protective

Order, even as to documents not marked in accordance with the provisions of paragraph 2 of this Order, unless otherwise advised by counsel for the Producing Party. In addition, subject to the Court's approval by entry of this Protective Order, it is agreed that inadvertent production of privileged or attorney's work product documents or information does not waive the attorney-client privilege or attorney's work product privilege if a request for return of such documents or information is made promptly after a party learns of its inadvertent production.

10. Acceptance by a party of information, documents, or things identified as confidential information hereunder shall not constitute a concession that the information, document or thing is confidential. If, subsequent to the acceptance of information, documents, or things identified as confidential hereunder, a party wishes to challenge the other party's claim of confidentiality, that party shall make a written request to the other party that the claim of confidentiality be withdrawn, specifically identifying the information, documents, or things at issue. If the other party refuses to withdraw its claim of confidentiality or makes no response within twenty (20) days of receipt of such request, the party challenging the claim of confidentiality may move this Court for determination of whether the claim of confidentiality is justified. In the resolution of such motion, the burden of establishing the confidentiality of the information, document, or thing shall be on the party who made the claim of confidentiality.

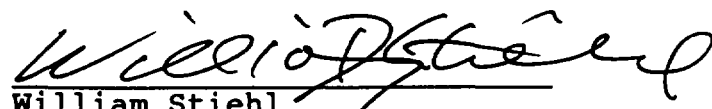
11. The failure of any party to designate as confidential any information or material, whether in writing or other than in writing, shall create a waiver of confidentiality of such information or material.

12. Promptly upon final termination of this litigation, each party having documents containing confidential information or material designated as confidential by another party shall assemble and return to that party all such documents (including all copies, summaries and abstracts thereof) and materials and shall return or destroy all other outlines, compilations, memoranda, documents embodying or concerning confidential information or information obtained from material designated as being confidential except that counsel of record for any party may retain one copy, under seal, in the event of any dispute over the use of or dissemination of information or material, and any attorney work product containing confidential information, subject to the terms hereof. Destruction of any confidential information or material shall be confirmed in writing by the party destroying such information or materials and receipt of any confidential information or material shall be acknowledged by the party receiving same.


13. This Protective Order may be amended by agreement of counsel for the parties in the form of a stipulation that shall be filed in this case. Any party for good cause shown may apply to the Court for a modification of the Protective Order.

Dated this 17th, day of
~~August~~ 1993.
~~November~~


SO ORDERED:


William Stiehl
United States District Judge

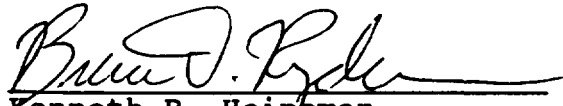
AGREED TO:


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Counsel for Monsanto Company

CONFIDENTIALITY AGREEMENT

_____, declares that: I reside at _____ in the City of _____, County of _____, State of _____.

I have read the Protective Order dated _____ in Cerro Copper Products Co. v. Monsanto Company pending in The United States District Court for the Southern District of Illinois;

I agree to comply with and be bound by the provisions of the Protective Order;

I will keep in confidence, and will not divulge to anyone other than those permitted to have access under the terms of the Protective Order or copy or use except solely for the purposes of Cerro Copper Products Co. v. Monsanto Company, Civil Action No. 92-CV-204-WDS, any information or documents designated confidential pursuant to the Protective Order;

I realize that any violation of the Order may subject me to sanctions by the Court, including punishment for civil contempt.

I declare under penalty of perjury that the foregoing is true and correct. Executed this _____ day of _____, 19__.
